

FILED

NOV 2 1964

JOHN F. DAVIS, CLERK

IN THE

# Supreme Court of the United States

October Term, 1964.

No. 644

THE UNITED GAS IMPROVEMENT COMPANY,

*Petitioner,*

*v.*

CONTINENTAL OIL COMPANY, GENERAL CRUDE OIL  
COMPANY, M. H. MARR, SUN OIL COMPANY, TEXAS  
EASTERN TRANSMISSION CORPORATION,

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.**

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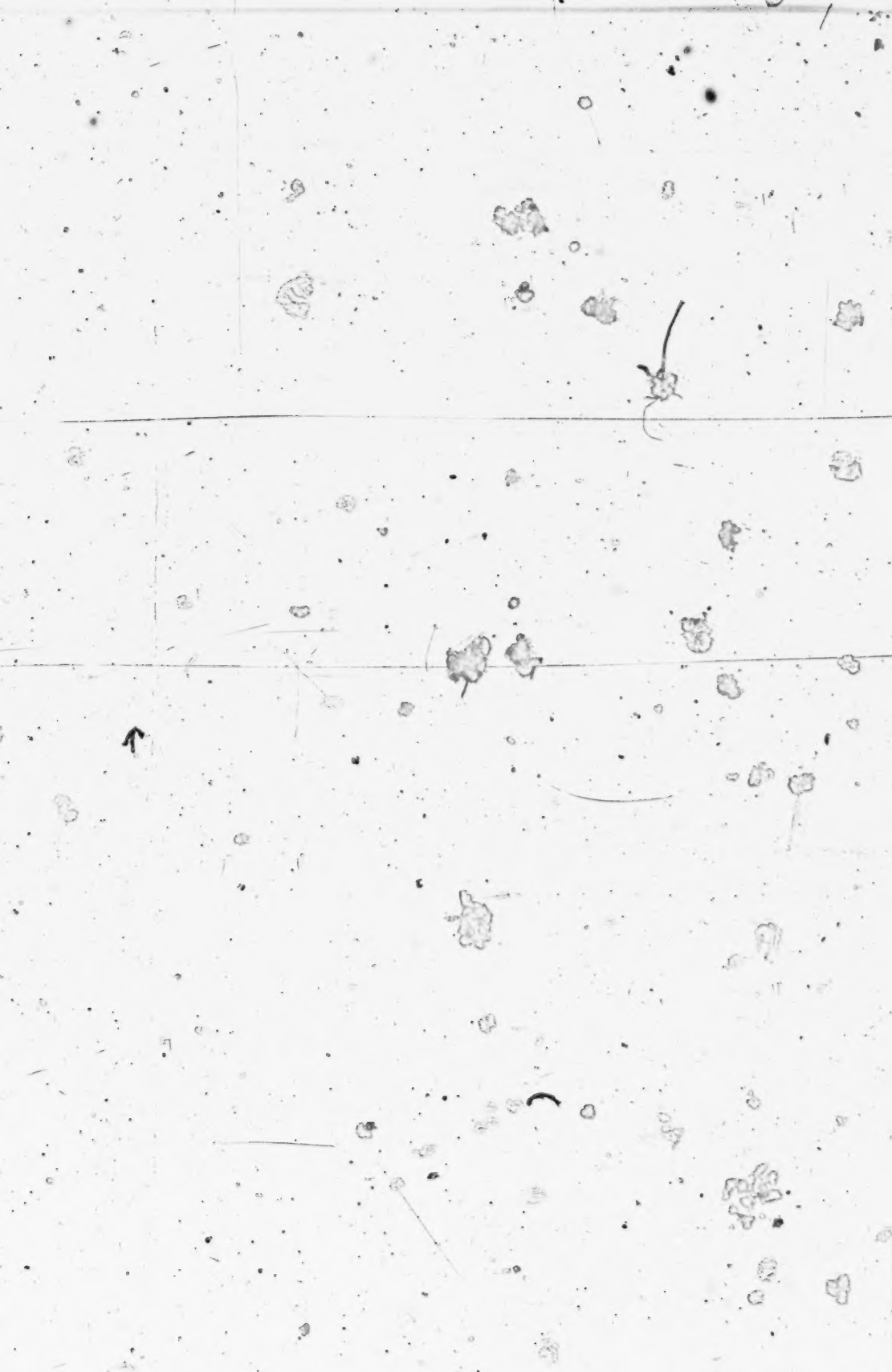
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IN THE  
**Supreme Court of the United States.**

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OCTOBER TERM, 1964  
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No.  
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THE UNITED GAS IMPROVEMENT COMPANY,  
*Petitioner,*

v.

CONTINENTAL OIL COMPANY, GENERAL CRUDE  
OIL COMPANY, M. H. MARR, SUN OIL COMPANY,  
TEXAS EASTERN TRANSMISSION CORPORA-  
TION,

*Respondents.*

—  
**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT.**

Petitioner, The United Gas Improvement Company, prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered on August 3, 1964, which reversed certain orders of the Federal Power Commission. Petitioner is informed that the Solicitor General of the United States is filing on behalf of the Federal Power Commission a petition likewise seeking reversal of the same judgment.

**OPINIONS BELOW.**

The Opinion of the Court of Appeals for the Fifth Circuit is not yet reported. It is reprinted in Appendix A hereto, *infra* pages 1a-14a. The Opinions and Orders of the Federal Power Commission which were reviewed by the Court of Appeals are reported at 29 FPC 249, 29 FPC 692, and 30 FPC 153 (1964), and are reprinted in the Joint Appendix prepared for the Court of Appeals, copies of which have been deposited with this Court by the Solicitor General of the United States (R. 962-84, 1136-39 and 1223-33).

**JURISDICTION.**

The judgment of the Court of Appeals was entered on August 3, 1964. Jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1) and Section 19(b) of the Natural Gas Act, 15 U. S. C. § 717r(b).

**QUESTIONS PRESENTED.**

Producer-respondents in 1957 entered into conventional sales contracts with pipeline-respondent at "out-of-line" initial price levels which, under then-existing Federal Power Commission precedent, were not subject to regulatory scrutiny under Section 7 of the Act. When the Courts overturned this Commission precedent and held initial price to be subject to effective regulation under Section 7 of the Act, producer-respondents recast their sales transaction with pipeline-respondent into a new form: bulk sale of the gas reserves in place for a lump sum adjusted based upon actual volumes of gas. The Commission found this sale to have the same effect as the originally planned sales, to be actually a sale of gas for resale in interstate commerce, and to be subject to effective price regulation. This Commission determination was reversed by the Court of Appeals. The questions presented therefore are:

(1) Can effective regulation of a sale of gas for resale in interstate commerce by producer-respondents be avoided, and the exemption in Section 1(b) of the Natural Gas Act be invoked at the discretion of the parties, merely by labelling the transaction a transfer of lease when it was actually a sale of gas for resale?

(2) Did the Court of Appeals err in upsetting the Commission's finding that the bulk sale of fully-developed gas reserves was a sale for resale in interstate commerce, and not a mere transfer of leases, since there is evidence in the record to support such Commission findings?

(3) Did the Court of Appeals err in upsetting the Commission's finding that effective regulation of the subject gas sale transaction could not be accomplished where the producer-respondents transferred the gas in bulk?

**STATUTE INVOLVED.**

The statutory provisions involved are contained in Sections 1(b) and 19(b) of the Natural Gas Act, 52 Stat. 822 (1938), as amended, 15 U. S. C. §§ 717(b), 717r(b). The statutory language in these sections relied on herein is as follows:

**"NECESSITY FOR REGULATION OF NATURAL-GAS COMPANIES**

Section 1. . . . (b) The provisions of this act shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas.

**REHEARING; COURT REVIEW OF ORDERS**

Section 19. . . . (b) . . . The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. . . ."

**STATEMENT OF THE CASE.**

On February 1, 1957, the four producer-respondents, Continental Oil Company, General Crude Oil Company, M. H. Marr and Sun Oil Company, executed sales contracts with the pipeline-respondent, Texas Eastern Transmission Corporation (Texas Eastern), an interstate pipeline running from the Gulf area to the Eastern seaboard, covering sales of gas from wells drilled by them in the fully developed Rayne Field in South Louisiana. These contracts called for initial prices of 23.9¢ per Mcf including tax reimbursement. Shortly thereafter, Texas Eastern filed application for a certificate of public convenience and necessity to construct a short connecting line to the Rayne Field to take the gas and the four producer-respondents also filed applications for certification of the sales of gas to Texas Eastern.

These related applications were set for hearing, and Petitioner, The United Gas Improvement Company,<sup>1</sup> together with other distributors on the Eastern seaboard, all of which purchase substantial quantities of natural gas from Texas Eastern for resale to consumers, and the Public Service Commission of New York, intervened. This intervention was prompted by the fact that the initial price of 23.9¢ per Mcf proposed for these sales was the highest price up to that time sought in South Louisiana. Hearings were held and the Examiner entered an Order, over the protest of intervenors, recommending unconditional certification of the applications. In so ruling the Examiner was applying the then-existing Commission precedent that the Natural Gas Act and the public interest required no scru-

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1. Under an agreement with the City of Philadelphia, The United Gas Improvement Company operates the municipally-owned Philadelphia Gas Works and related facilities. The gas works distributes 1035 Btu natural gas to some 600,000 customers in the City of Philadelphia.

tiny of initial prices as a prerequisite to certification of producer sales under Section 7 of the Act.

While the matter was pending before the Commission on exceptions by Petitioner and others to the Examiner's decision, the Court of Appeals for the Third Circuit decided the "Catco" case, reversing an order of the Commission granting unconditional certification of gas sales by the CATC producers (which include Continental Oil Company) from certain off-shore Louisiana fields at an initial price of 22.4¢ per Mcf, including tax. *Public Service Comm'n v. FPC*, 257 F. 2d 717 (3rd Cir. 1958), *aff'd sub nom. Atlantic Ref. Co. v. Public Service Comm'n*, 360 U. S. 378.

Thereafter the producer-respondents, apparently seeing the "handwriting on the wall" (R. 1017), entered into further negotiations with Texas Eastern, and three of the respondents filed notice of the termination of their gas sales contracts; and withdrawal of their certificate applications was granted.<sup>2</sup> Texas Eastern then filed a motion to reopen the hearing and amend its original certificate application to modify in a minor way the design of certain facilities and to reflect a most dramatic change in the method of the sale of the Rayne Field gas. Instead of the earlier normal per Mcf purchase from the four producer-respondents, Texas Eastern proposed to buy for a single lump sum, adjusted, however, to the actual volume, the known reserves formerly committed to the rescinded contracts, which acquisition outwardly was described as a transfer of lease.

To effectuate this lease sale agreement Texas Eastern organized a wholly-owned subsidiary, Louisiana Gas Corporation (R. 441), through which it entered into new agreements with the producer-respondents on December 4, 1958. By an agreement of the same date pipeline-respondent, Texas Eastern purchased from Louisiana Gas the interests

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2. The fourth, Continental, did not apply for withdrawal until later. Grant of withdrawal to it was made as part of the first Commission Opinion herein, which was subsequently vacated.

Louisiana Gas had acquired from producer-respondents, without assuming any obligation to pay the producer-respondents.

The consideration for the conveyance was \$134,395,700.00, of which \$12,420,500.00 was paid in cash and the balance in promissory notes. These notes provided that should Texas Eastern determine that gas production should exceed a specified amount, payment of the notes would be accelerated (in inverse order of maturity), under a formula geared to a stipulated quantity of gas production.

At the reopened proceeding dealing with Texas Eastern's altered application the Commission omitted the intermediate decision procedure and on June 23, 1959, issued its Opinion No. 322 (R. 449-67, 21 F. P. C. 860), which unconditionally certificated Texas Eastern's proposal and in language and tenor appeared to confer general approval upon the terms of the acquisition arrangement, including price.

The New York Commission applied for rehearing of Opinion 322, but, nonetheless, the producer-respondents and Texas Eastern four days thereafter completed the sale transaction and Texas Eastern began to receive Rayne Field gas.

The application for rehearing was denied and the New York Commission appealed to the Court of Appeals for the District of Columbia, which set aside the certificate order. *Public Service Comm'n v. FPC*, 287 F. 2d 143 (D. C. Cir. 1960).

The court held that the Commission's opinion appeared to confer approval on the price of the acquisition without any substantial basis in the evidence. The court said:

"It is of no importance here that the transactions by which Texas Eastern proposes to acquire the gas will themselves be, by virtue of a change in form, beyond the regulatory control of the Commission. The pipeline construction project and the transactions by which Texas Eastern will dispose of the gas thus ac-

## *Petition for Writ of Certiorari*

quired clearly are within the Commission's jurisdiction. The relevance of Texas Eastern's acquisition costs to these matters is unaffected by the form of the transaction; the Commission's warrant to inquire arises by virtue of its responsibility to regulate the purchaser, regardless of the status of the seller.

Two courses are open to the Commission. It may, by clarification of the order presently under review, expressly disclaim any approval of the price to be paid for natural gas by the applicant. See *Kansas Pipe Line and Gas Co., et al.*, supra note 4. Or it may reopen the record in the certificate proceeding to permit Texas Eastern to establish by adequate evidence that the acquisition costs which it proposes to incur will be consistent with the public convenience and necessity." *Id.* at 14.

On remand the Commission proceeded in accordance with the second suggestion of the court. At the reopened proceeding Texas Eastern undertook to present further evidence showing that its acquisition of this gas was made at a price consonant with the public convenience and necessity. This proved difficult since, as the Examiner found at the hearing's conclusion: "it appears virtually impossible, from the record, to determine the future costs to Texas Eastern for the Rayne Field since they are predicated upon assumptions and estimates" (R. 891-92). For this reason the Examiner issued the certificate to Texas Eastern upon the condition that Texas Eastern, in computing the costs for acquiring the Rayne Field gas, include a value for the gas no higher than 18.5¢ per Mcf.<sup>3</sup> The Examiner noted that Petitioner herein and the Commission Staff "vigorously contend in their briefs the Commission does have jurisdiction over such [Rayne Field gas] acquisitions" (R. 885)

3. This represented the Examiner's finding as to the "in line" going rate for gas in South Louisiana at the time the present transaction was entered into.

as it had over their predecessor sales. However, he concluded that the Commission had not retained such jurisdiction (R. 887). Petitioner, Texas Eastern and the Commission Staff filed exceptions. On February 6, 1963, the Commission issued its Opinion No. 378 deciding several important issues. Foremost, after considering the question, raised by the exceptions of Petitioner and Staff, of its jurisdiction over the sale of gas involved, the Commission found the following facts:

“(1) Only gas in particular strata is conveyed; and the producers retain their interest in oil and other minerals;

(2) In effect the transaction is for the sale of stripped gas inasmuch as the producers are to receive a production payment from Texas Eastern from the sale of natural gas liquids;

(3) While the payment for the leases is represented by notes and spread over a 16-year period, the notes have an acceleration clause by which payment is accelerated if production is increased, so that Texas Eastern's payments would be geared to production;

(4) By a management agreement dated July 27, 1959, Continental agrees to operate the field, including drilling wells and managing all wells and equipment, and to deliver to Texas Eastern specified minimum daily quantities of gas; Texas Eastern will reimburse Continental for its expenses in operating the field but the assignment of the leases shows that the costs of operating the leases will be defrayed out of the production payments to which Continental is entitled;

(5) It is Louisiana Gas, not Texas Eastern which is liable on the notes to the producers, so that the true purchaser of the gas is not bound by the principal obligation of the lease sale transaction.” (R. 973)

Based on these findings it concluded that in effect and in substance producer-respondents had consummated a sale of gas to pipeline-respondent, Texas Eastern, and nothing else. Since the gas acquired by Texas Eastern could only flow, and was in fact flowing, in interstate commerce and the price paid therefor had an impact only upon the price of gas in interstate commerce, which Congress intended to be regulated nationally under the Natural Gas Act, the Commission correctly held that the sale was subject to its jurisdiction.

As the inevitable consequence of this holding, the Commission further held that certification of such a jurisdictional sale was required. However, based on the facts of record and its experience in two hearings of the issues in the present case, the Commission concluded that it would not be in the public interest to certificate the sale in its existing bulk form. It therefore deferred final decision on the public convenience and necessity issues before it and offered the interested parties an opportunity to recast the transaction in another form, while retaining the substance for ultimate regulatory scrutiny by the Commission.

All the producer-respondents and the pipeline-respondent, Texas Eastern, filed petitions for rehearing which were denied, upon which they petitioned the Court of Appeals for the Fifth Circuit for review.

On August 3, 1964, that court reversed the Commission's jurisdictional finding and remanded the case to the Commission for further hearing and consideration of Texas Eastern's application alone. In the course of its opinion the Court examined the "Assignment and Conveyance" between the producer-respondents and Texas Eastern and disagreed with the Commission's factual finding that the document embodied a sale of gas. Instead it found that the documents were "leases," and therefore within the "production and gathering" exemption contained in Section 1(b) of the Act. Because of this conclusion it found no occasion to pass on the Commission's holding that the bulk transfer, in any event, was not in the public interest.

**REASONS FOR GRANTING THE WRIT.**

1. **The Decision of the Court Below Fundamentally Undermines This Court's Decision in *Phillips Petroleum Company v. Wisconsin* That Sales by Independent Producers of Natural Gas Are Subject to Regulation and Thus Provides a Method for Complete Avoidance of Such Regulation. It Therefore Represents a Serious Threat to Producer Price Regulation Under the Natural Gas Act.**

In its decision in *Phillips Petroleum Company v. Wisconsin*, 347 U. S. 672, this Court held that the Federal Power Commission has, and, indeed, must exercise, jurisdiction to regulate sales of natural gas in interstate commerce, "whether occurring before, during or after transmission by an interstate pipeline company." *Id.* at 682. It would not be an exaggeration to say that implementation of this decision by the Federal Power Commission has been strongly resisted by independent producers of natural gas. Moreover, in the years immediately following *Phillips* the effect of the decision was largely nullified. Though a producer's overall rate structure was potentially subject to regulation under Sections 4 and 5 of the Act, in practice proceedings under these Sections were "nigh interminable," as this Court has recognized, *Atlantic Ref. Co. v. Public Service Comm'n*, 360 U. S. 378, and never reached the stage of effective regulation. With the "evil day," *Wisconsin v. FPC*, 373 U. S. 294, 324 n. 8, thus postponed the independent producer could reap undisturbed the benefits of steeply ascending prices, since it was at that time Commission policy to certificate all new applications under Section 7 of the Act to make sales, regardless of the level of the price proposed, so long as arm's-length bargaining was shown. *E.g., Anthony J. Tamborello*, 15 F. P. C. 1 (1956); *Transcontinental Gas*

*Pipe Line Co.*, 20 F. P. C. 264 (1958), *aff'd sub nom. UGI v. FPC*, 269 F. 2d 865 (3d Cir. 1959), *reversed*, 361 U. S. 195.

This *laissez-faire* policy was strongly protested, however, by Petitioner and other intervenors, before the Commission and eventually before the courts. *E.g.*, *UGI v. FPC*, *supra*. Producers could hardly have been surprised, therefore, when the Third Circuit in 1958 reversed the unconditional certification of 22.4¢ per Mcf prices for sales from off-shore Louisiana. *Public Service Comm'n v. FPC*, 257 F. 2d 717 (3d Cir. 1958) (*Catco*). On appeal from that decision this Court was unequivocal in pointing out the Commission's error in failing to afford full consumer protection through proper regulation of initial price. *Atlantic Ref. Co. v. Public Service Comm'n*, *supra*. It was then clear to the producer that regulation was thenceforth to be made effective from the initiation of service. This resulted in producer's counteraction, and the producer-respondents herein took the lead (See R. 1016-18).

A decision of this Court in 1949, *FPC v. Panhandle Eastern Pipe Line Company*, 337 U. S. 498, had held the Commission lacked jurisdiction to enjoin the alienation by a pipeline of certain gas leases, because leases are related to production and production of natural gas is specifically exempted from jurisdiction by Section 1(b) of the Act. Given such a decision, it might well have occurred to a producer that jurisdiction might be avoided by changing a contract for long term delivery on a per Mcf basis of specific committed gas reserves into a "one-shot" sale of all the specific committed reserves for a fixed price (cast in the form of a sale of the leases under state law). In any event producer-respondents herein negotiated just such an arrangement with pipeline-respondent, and proceeded as if the transaction were not subject to regulation.

In its Opinion 322 (R. 449-67; 21 F. P. C. 860) the FPC, as then constituted, appeared to give its hearty sanction to such a transaction. Emboldened by this precedent, a number of other major producers or groups of cooperating

producers arranged similar transactions for some of the major outstanding reserves of gas in both South Louisiana and Texas. *E.g., Tennessee Gas Transmission Co., et al., Docket G-14562, et al.* (Blocks 46 & 64, So. La.); *Tennessee Gas Transmission Co., et al., Docket CP 61-106, et al.* (Bastian Bay, So. La.); *Monterey Gas Trans., et al., Docket CP 62-88, et al.* (King Ranch, Texas); *Continental Oil Co., et al., Docket RI 64-129* (Ship Shoal, So. La.). The trend therefore was unmistakable, but happily premature. Opinion 322 (which on its face purported to deal solely with Texas Eastern's minor expansion of facilities) was reversed by the Court of Appeals for the District of Columbia: *Public Service Comm'n v. FPC*, 287 F. 2d 143 (D. C. Cir. 1960).

At the reopened hearings Petitioner and Staff counsel, taking note of the growing popularity of "nonjurisdictional" lease sale deals, urged the Commission to consider the real issue before it—not Texas Eastern's purchased gas costs, but the public interest price for a sale of gas by the producers. The Commission found that it did have jurisdiction over the sale.

The Court of Appeals below reversed the Commission on the broad ground that, although gas was sold, the lease form of the transaction brought it within the holding of the *Panhandle* case and therefore within the "production or gathering" exemption in Section 1(b) of the Act. In effect the court below opened again the avenue of escape from regulation which producers thought they had found after the Commission handed down its Opinion 322.

That avenue is different from a "gap" in regulatory coverage. It is a method by which sales from substantial reserves by producers in interstate commerce, which are clearly subject to regulation, may at the discretion of the parties be converted by contract into "non-jurisdictional" transactions subject to no regulation. The "avenue" runs, like a Hausmann boulevard, squarely through the middle of this Court's first *Phillips* decision. The decision of the court below is one of extraordinary importance because it

avoids not only this Court's decision in *Catco* (which may have been the original purpose of the lease transaction herein) but, most important, that in *Phillips*. If the decision below stands, regulation of "lease sales" could only be accomplished indirectly in pipeline rate cases, a method which this Court has noted does not fully protect the ultimate consumer. *E.g., Interstate Natural Gas Co. v. FPC*, 331 U. S. 682, 692-93. Under the decision of the court below the cost to the producer-respondents of developing the gas to be taken into Texas Eastern's system is subject neither to initial scrutiny nor to any later rate proceeding under Sections 4 or 5.

This would indeed offer an attractive prospect to the independent producer. The only remaining question would be whether such "lease sales" would be generally economically feasible. It seems certain that they would be. The bulk of the large gas reserves in the United States are in the hands of large integrated petroleum companies. Small producers, those with sales of under 10 million Mcf per year, have little or no impact on the market. See, Presiding Examiner's "Initial Decision on Permian Area Rates," issued Sept. 17, 1964, in Docket AR 61-1 (first area rate proceeding), at mimeo pp. 153-51. The pipelines with which the major producers deal are in most cases enormous, diversified corporations commanding virtually unlimited borrowing power. Thus, these parties possess the resources to make such transactions, a situation which did not exist in the early days of the industry, and under the broad holding of the court below they would have every legal justification necessary to do so. Therefore, if the decision below stands, *Phillips* and *Catco*, and a major part of the Natural Gas Act, are deadletters as to large blocks of gas.

**2. The Decision Below Is in Conflict With a Decision of the Court of Appeals for the Tenth Circuit.**

The narrow legal question presented in the present case involves the scope of the basic and affirmative grant

of jurisdiction over "the sale in interstate commerce of natural gas for resale" contained in Section 1(b) of the Natural Gas Act and the countervailing of the exemption from jurisdiction accorded therein to "the production or gathering of natural gas."

This Court in *Phillips Petroleum Co. v. Wisconsin*, 347 U. S. 672, gave the basic and affirmative grant of Commission jurisdiction the broad construction which the purpose of the Act requires. However, because the specific facts in the *Phillips* case involved a sale made after "production and gathering" were completed, there followed controversy as to the extent of the barrier, if any, raised by the exemption against the basic grant.

Depending on whether prime emphasis was attached to the precise facts presented in the *Phillips* case or to the broad language used in the dictum of this Court's opinion, arguments were made for either of the possible interpretations of that decision: that jurisdiction is limited to the sale of natural gas at the tailgate of the processing plant—the point where the natural gas enters the interstate pipeline—or, in the alternative, that jurisdiction extends to the point of the first sale of natural gas for resale, wherever that may be, if interstate commerce turns out ultimately to be involved.

The Commission, moreover, has always taken the broad view of the basic grant, and has been uniformly sustained by the courts—until the decision of the court below. See *J. M. Huber v. FPC*, 236 F. 2d 550 (3d Cir. 1956), cert. denied, 352 U. S. 971; *Deep South Oil Co. v. FPC*, 247 F. 2d 882 (5th Cir. 1958); cert. denied, sub nom. *Humble Oil & Ref. Co. v. FPC*, 355 U. S. 930; *Continental Oil Co. v. FPC*, 266 F. 2d 208 (5th Cir. 1959), cert. denied, 361 U. S. 827. The most significant post-*Phillips* case dealing with this precise issue is *Saturn Oil & Gas Co. v. FPC*, 250 F. 2d 61 (10th Cir. 1957), cert. denied, 355 U. S. 956. In that case the producer made its sale at the mouth of the "Christmas

tree.”<sup>4</sup> It owned no pipe. The court found that the sale was made “prior to gathering,” *Id.* at 64. Nonetheless, it held that the basic grant of jurisdiction prevailed over the gathering exemption, under the rationale of this Court’s *Phillips* decision. It said:

“In the final analysis the question resolves itself into a determination of whether the *Phillips* decision is to be viewed in the light of its precise facts or in the light of the broad language of the court. We are convinced that the court with full recognition of the precise facts, which it detailed in its opinion, carefully refrained from basing its decision on the inapplicability of the exemption and held that the production or gathering exemption of section 1(b) did not apply to exclude from the jurisdiction of the Commission sales by any producer of natural gas for transportation interstate for resale to the public. We are bound by the *Phillips* decision.”

In direct conflict with the decision just quoted, the court below gave no weight to the fact that the producer respondents in fact sold specific known reserves of gas to Texas Eastern for transportation and resale in interstate commerce. Instead, finding certain attributes of a lease transaction to be present in the transaction by which the gas was transferred from the producers to the pipeline, it gave broad and controlling effect to the “production and gathering” exemption and held the sale of gas to be beyond regulation. The far-reaching consequences of the decision are outlined as the first reason herein for granting the writ. The specific erroneous legal conclusion is in direct conflict with that reached by the Court of Appeals for the Tenth Circuit in the *Saturn* case, and the conflict can only be resolved by this Court. The very important

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4. The Court accepted the definition of “Christmas tree” as “the assembly of valves, pipes, and fittings used to control the flow of oil and gas from the casing head.”

legal question involved—the effect of the confrontation of the basic grant and the exemption—has application far beyond lease transactions. The proper exercise by the Commission of its jurisdiction and the protection of the consumer therefore demand the guidance of an opinion from this Court.

**3. The Decision Below Misconstrues This Court's Decision in *FPC v. Panhandle* in Such a Way as to Make It Conflict With This Court's Later Decision in *Phillips Petroleum v. Wisconsin*.**

The decision of this Court in *FPC v. Panhandle Eastern Pipe Line Co.*, 337 U. S. 498, dealt with the alienation by an interstate pipeline of a large block of gas leases covering undeveloped land. The transfer was to a producing affiliate of the pipeline, which was bound by contract to develop the leases and sell the gas therefrom entirely in the *intrastate* market in Kansas.

The Commission believed that the alienation of the potential reserve represented by those leases would seriously impair the ability of the interstate pipeline to perform in accordance with its certificate of public convenience and necessity, which had been based in part upon those very reserves. Therefore the Commission ordered a hearing into the effect of the lease transfer. However, the date for transfer of the leases was approaching and, to preserve the status quo, the Commission asked a United States District Court to restrain temporarily the pipeline company from completing the transaction until after the Commission had completed its legitimate investigation.

The District Court refused the restraining order and was affirmed by the Court of Appeals on the ground that the Commission lacked jurisdiction over the transfer of the lease. This Court also affirmed. The jurisdictional issue turned on (1) whether or not a company's interest in gas leases was included within the specific exemption of "pro-

duction or gathering", and (2) if leases were within the exemption, whether the need of the Commission to protect its clear jurisdiction over an interstate pipeline was intended to prevail over the policy of the exemption. In its opinion this Court answered "yes" to the first issue and "no" to the second.

The present case, in contrast to *Panhandle*, involved a transfer of fully developed leases from producers to an interstate pipeline, where the gas to be extracted under the lease was intended to flow entirely in interstate commerce. In the present case the Commission found a sale of gas in interstate commerce, whereas in *Panhandle* no such finding was sought or made, nor could it have been, since all the gas involved was committed by contract to intrastate commerce. As noted, *Panhandle* presented an issue of the scope of the Commission's "protective" jurisdiction. It presented no confrontation—as did the subsequent *Phillips* case and the present case—between the basic grant of jurisdiction over sales in Section 1(b) and the exemption contained in the same Section.

When this Court has been presented with such a direct confrontation, it has construed the basic grant broadly and the exemption narrowly, as Congress intended. *Interstate Natural Gas Co. v. FPC*, 331 U. S. 682, 691; *Phillips Petroleum Corp. v. Wisconsin*, *supra*. The Courts of Appeals, including the Fifth Circuit prior to the decision below, have followed this Court in that interpretation of the two provisions. See cases cited *supra*, p. 15.

Ignoring this distinction between the basic issues involved in *Panhandle* and *Phillips*, the court below read *Panhandle* as creating an inviolable circle of exemption for any natural gas transaction which might be cast by the parties in the form of a lease transaction. By this extremely formalistic reliance upon appearance over effect, the court below extended the holding of *Panhandle* into an area never contemplated in this Court's decision in that case—the area of sales in interstate commerce. By so

doing, the court below brings the *Panhandle* decision into direct collision with this Court's subsequent *Phillips* decision, as discussed under the first reason for granting the writ.

This misconstruction and extension of the *Panhandle* decision can only be cured and clarified by this Court. If it is permitted to stand it can only create increasing uncertainty as to jurisdiction in areas other than lease transactions, wherever a sale in interstate commerce is made as an intimate adjunct of the processes of production and gathering.

**CONCLUSION.**

For the foregoing reasons it is urged that this petition for a writ of certiorari be granted.

Respectfully submitted,

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Dated: October 30, 1964



**APPENDIX A.**

**OPINION OF THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT**

**IN THE  
United States Court of Appeals  
FOR THE FIFTH CIRCUIT**

**No. 20560**

**M. H. MARR,**

**Petitioner,**

**v.**

**FEDERAL POWER COMMISSION,**

**Respondent.**

**No. 20564**

**SUN OIL COMPANY,**

**Petitioner,**

**v.**

**FEDERAL POWER COMMISSION,**

**Respondent.**

**No. 20582**

**CONTINENTAL OIL COMPANY,**

**Petitioner,**

**v.**

**FEDERAL POWER COMMISSION,**

**Respondent.**

**(1a)**

*Appendix A*

No. 20587

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GENERAL CRUDE OIL COMPANY,  
Petitioner

v.

FEDERAL POWER COMMISSION,  
Respondent.

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No. 20829

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SUN OIL COMPANY,  
Petitioner,

v.

FEDERAL POWER COMMISSION,  
Respondent..

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No. 20846

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M. H. MARR,  
Petitioner,

v.

FEDERAL POWER COMMISSION,  
Respondent.

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No. 20847

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GENERAL CRUDE OIL COMPANY,  
Petitioner,

v.

FEDERAL POWER COMMISSION,  
Respondent.

No. 20591

TEXAS EASTERN TRANSMISSION CORPORATION,  
Petitioner,  
v.

FEDERAL POWER COMMISSION,  
Respondent.

*Petitions for Review of Orders of the Federal Power  
Commission.*

(August 3, 1964.)

Before RIVES and BROWN, Circuit Judges, and GROOMS,  
District Judge.

RIVES, Circuit Judge: These are petitions to review certain opinions and orders of the Federal Power Commission pursuant to section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b). The petitioners are M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation. Unless otherwise noted, all of the petitioners with the exception of Texas Eastern will be referred to herein as "the assignors." The intervenors are the Public Service Commission of the State of New York, the United Gas Improvement Company, and the Public Service Electric and Gas Company.

In 1957 Texas Eastern, a natural-gas company owning and operating an interstate natural-gas transmission system, executed gas purchase contracts with the assignors to purchase their natural-gas production in the Rayne Field, Acadia Parish, Louisiana, at an initial price of 23.9¢ per

Mcf, including state taxes of 1.3¢ per Mcf.<sup>1</sup> At that time the assignors filed applications with the Federal Power Commission seeking certificates of public convenience and necessity for the gas sales, and Texas Eastern applied for a certificate to expand its interstate pipeline system in order to receive and re-sell the gas. These sales contracts, however, were cancelled in 1958 shortly after the Third Circuit decision in *Public Service Commission v. FPC*, 3 Cir. 1958; 257 F.2d 717, *aff'd sub nom. Atlantic Refining Co. v. PSC*, 1959, 360 U.S. 378 (popularly called CATCO), and the Commission permitted the assignors to withdraw their then pending certificate applications.

After the cancellation of the sales contracts, the assignors entered into agreements whereby they purported to assign or convey certain of their leasehold rights in the Rayne Field gas to Texas Eastern.<sup>2</sup> The Commission allowed Texas Eastern to amend its application so as to reflect the new agreements and in June 1959 unconditionally authorized the construction and operation of the proposed pipeline facilities. The opinion<sup>3</sup> approved the project without examining into the cost to Texas Eastern of the leasehold interests and noted that the Commission had no authority to issue a certificate directly authorizing the acquisition of the leases. The Public Service Commission of New York sought review of this order, and in *Public Service Comm'n v. FPC*, D.C. Cir. 1961, 287 F.2d 143, it was reversed and remanded by the District of Columbia Circuit. The court observed:

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1. Although a large, developed gas reserve, the Rayne Field gas as yet was not connected with any pipeline transporting natural gas in interstate commerce nor was it dedicated to any sale in interstate commerce.

2. The total purchase price was \$134,395,700.00. The purchaser was actually Louisiana Gas Corporation, a wholly-owned subsidiary of Texas Eastern, which in turn assigned its interest to Texas Eastern. Unless otherwise noted, Texas Eastern will be treated as the purchaser.

3. Texas Eastern Transmission Corp., Opinion No. 322, 21 F.P.C. 860 (1959).

"Sales of natural gas by an independent producer are subject to Commission regulation under Sections 4 and 5 of the Natural Gas Act. *Phillips Petroleum Co. v. State of Wisconsin*, 1954, 347 U.S. 672, 74 S.Ct. 794, 98 L.Ed. 1035. But the Commission has been held to lack jurisdiction over gas leases. *Federal Power Commission v. Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498, 69 S.Ct. 1251, 93 L.Ed. 1499."<sup>4</sup>

Nevertheless, the court held that the Commission did have jurisdiction over the pipeline construction project and the transactions by which Texas Eastern would dispose of the gas, for the Commission has a responsibility to regulate the purchaser, "regardless of the status of the seller."<sup>5</sup> Taking into consideration the Supreme Court's decision in *CATCO*, *supra*, the court concluded that insofar as the Commission's order purported to pass favorably upon the pricing aspects of the gas lease acquisitions, it was unsupported by substantial evidence in the record. The court offered the Commission two options: (1) clarifying the order by disclaiming any approval of the purchase price, or (2) reopening the record to allow Texas Eastern to establish that the acquisition costs would be consistent with the public convenience and necessity. The Commission's order was reversed, and the matter remanded to the Commission for further proceedings not inconsistent with the opinion of the court.

On remand, the Commission chose to reopen the record. In these proceedings Commission counsel argued for the first time that the Commission had jurisdiction over the acquisition of the leases. The Examiner, however, rejected this contention.<sup>6</sup> Instead, he recommended that Texas

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4. 287 F.2d at 145.

5. *Id.* at 146.

6. The Examiner's report stated:

"As far back as 1949, the Commission contended it had jurisdiction over the sale by Panhandle of certain leases and leasehold interests covering an estimated 12 per cent of the total gas reserves of

Eastern be issued a certificate of public convenience and necessity conditioned on its charging an initial, "in line" price of 18.5¢ per Mcf, exclusive of taxes, at 15.025 psia, and further conditioned on its maintaining supplemental accounts providing cost data.

Exceptions were filed, and in February 1963 the Commission issued Opinion No. 378, wherein it asserted jurisdiction over the lease transaction.<sup>7</sup> Looking to the "es-

Panhandle but the Supreme Court in *F.P.C. v. Panhandle Eastern Pipe Line Company, et al.*, 377 U.S. 498, recognized and upheld the traditional industry practice of a natural gas company to buy and/or sell leases and leasehold interests which are 'not connected with any pipeline system' (emphasis supplied) without the approval of the Commission. From this, it would appear, one of the prerequisites to Commission jurisdiction is that the natural gas under the leases or leasehold interests must first be connected to a pipeline system transporting natural gas in interstate commerce. The Commission argued before the D.C. Circuit, in the following case, it did not have jurisdiction over Texas Eastern's acquisition of the Rayne Field leases and leasehold interests and, in its opinion, the Court of Appeals, D.C. Circuit, in *Public Service Commission of the State of New York v. F.P.C.*, 287 F.2d 143, 145 said '... the Commission has been held to lack jurisdiction over gas leases' citing *F.P.C. v. Panhandle, supra*. It is contended in the briefs filed herein the Supreme Court reversed its decision in the *Panhandle* case, *supra*, by its decision in *Phillips Petroleum Co. v. Wisconsin, et al.*, 1954, 347 U.S. 672. Quite to the contrary. In *Phillips* the Supreme Court recognized and reaffirmed the Panhandle prerequisite of the gas being attached to an interstate system of pipelines before the Commission acquired jurisdiction. . . .

"[T]he natural gas under consideration by the Supreme Court in its *Phillips* opinion, *supra*, had previously been attached to, or connected with, an interstate system of pipelines and, because of this connection, the gas flowed in interstate commerce and thereby became subject to the jurisdiction of the Commission.

"In applying the principles of the *Panhandle* and *Phillips* opinions, *supra*, to the evidence of record in this hearing, it is concluded the Commission was without jurisdiction over the Rayne Field lease and leasehold acquisition and the natural gas under said leases and leaseholds by Texas Eastern until (1) the gas was connected to an interstate system of pipelines or (2) the gas was dedicated to a sale in interstate commerce."

7. Texas Eastern Transmission Corp., Opinion No. 378, 29 F.P.C. 249 (1963).

sence" of the transaction, the Commission concluded that it was a transfer of natural gas for resale in the interstate market and that such a transfer is subject to the Commission's jurisdiction even when it occurs during the course of production and gathering. The Commission declined to inquire into the cost data and delayed passing on Texas Eastern's certificate; instead, it commanded the assignors to file appropriate rate schedules and applications for certificates for the sale of the gas, to be effective retroactively. The assignors were allowed to file applications for rehearing, but on rehearing the Commission, with one Commissioner dissenting, reaffirmed its previous holding and noted that the failure of the assignors to file for certificates would result in their violating the act. The petitioners are seeking review of these opinions and the orders related thereto.<sup>8</sup> The principal question to be decided is whether the Commission has jurisdiction over these lease transactions.

Significant to the disposition of the instant case is the Supreme Court decision in *FPC v. Panhandle Eastern Pipe Line Co.*, 1949, 337 U.S. 498. Panhandle Eastern, the owner of a pipeline system transporting natural gas in interstate commerce, transferred gas leases to a subsidiary, Hugoton. In return, Panhandle received all the outstanding stock of Hugoton and after a certain period an option to purchase all of the gas produced from the land. At the time of the transfer the land was undeveloped<sup>9</sup> and not connected with any pipeline system. Hugoton thereafter contracted to sell that gas produced prior to the effective

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8. The petitions which were filed in this Court for review of Opinion No. 378 (Nos. 20,560; 20,564; 20,582; 20,587 and 20,591) were filed while the applications for rehearing were still pending. After the opinion on rehearing was rendered, Marr, Sun and General Crude filed new petitions (Nos. 20,829; 20,846 and 20,847) seeking review of both opinions, thus avoiding any jurisdictional problems. Continental and Texas Eastern, however, merely filed supplements to their petitions so as to include therein the opinion on rehearing. We conclude that this was sufficient to give this Court jurisdiction under 15 U.S.C. § 717r(b).

9. See 337 U.S. at 500, 519.

date of the option to a non-jurisdictional intrastate seller of natural gas. The gas leases transferred accounted for 12% of the gas reserves relied upon by Panhandle as the supply necessary to perform the services previously authorized by the Commission.

The Supreme Court held that the Commission did not have jurisdiction over the transfers of the leases. The Court based its decision on section 1(b) of the Natural Gas Act, which exempts "the production or gathering of natural gas" from Commission jurisdiction.<sup>10</sup> It concluded that this phrase includes "the producing properties and gathering facilities of a natural-gas company"<sup>11</sup> and "incidents connected with the production or gathering of gas."<sup>12</sup> The Court found that "of course leases are an essential part of production."<sup>13</sup> Thus it concluded that since "the transfer of undeveloped gas leases is an activity related to the production and gathering of natural gas and beyond the coverage of the Act, the authority of the Commission cannot reach the sales."<sup>14</sup>

The Court was not persuaded by arguments that the gas leases had been dedicated to the discharge of Panhandle's public-utility obligation to render adequate service at reasonable and nondiscriminatory rates :

"To accept these arguments springing from power to allow interstate service, fix rates, and control aban-

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10. The Natural Gas Act § 1(b), 15 U.S.C. § 717(b), states:

"(b) The provisions of this chapter shall apply to the transportation of natural gas in interstate commerce, to the sale in interstate commerce of natural gas for resale for ultimate public consumption for domestic, commercial, industrial, or any other use, and to natural-gas companies engaged in such transportation or sale, but shall not apply to any other transportation or sale of natural gas or to the local distribution of natural gas or to the facilities used for such distribution or to the production or gathering of natural gas."

11. 337 U.S. at 505.

12. *Id.* at 506.

13. *Id.* at 505.

14. *Id.* at 515.

donment would establish wide control by the Federal Power Commission over the production and gathering of gas. It would invite expansion of power into other phases of the forbidden area. It would be an assumption of powers specifically denied the Commission by the words of the Act as explained in the report and on the floor of both Houses of Congress. The legislative history of this Act is replete with evidence of the care taken by Congress to keep the power over the production and gathering of gas within the states. This probably occurred because the state legislatures, in the interests of conservation, had delegated broad and elaborate power to their regulatory bodies over all aspects of producing gas. The Natural Gas Act was designed to supplement state power and to produce a harmonious and comprehensive regulation of the industry. Neither state nor federal regulatory body was to encroach upon the jurisdiction of the other. Congress enacted this Act after full consideration of the problems of production and distribution. It considered the state interests as well as the national interest. It had both producers and consumers in mind. Legislative adjustments were made to reconcile the conflicting views."<sup>15</sup>

It was noted that for over ten years the Commission had not claimed the right to regulate dealings in gas acreage. The Court concluded, "If the Commission is of the opinion that it should have power to control the disposition of leases by natural gas companies, it is authorized to call the attention of Congress to that fact."<sup>16</sup> It is significant that annually for the past twelve years the Commission has unsuccessfully asked Congress to grant it jurisdiction over the transfer of leaseholds by natural-gas companies.<sup>17</sup>

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15. *Id.* at 509-13 (footnotes omitted).

16. *Id.* at 515-16.

17. See Texas Eastern Transmission Corp., Opinion No. 378-A, 30 F.P.C. . . . , n. 1 (1963) (dissenting opinion).

The Commission first argues that the "Lease Sale" transaction was in essence a sale of gas and thus does not come within the *Panhandle* decision. The Commission reasons that an ordinary oil and gas lease passes operating rights plus rights to the oil, gas, gas condensates, and other minerals. Using a mathematical analogy, it concludes that a "lease" which does not pass operating rights or rights to oil, gas condensates, or other minerals is merely a sale of gas. The Commission relies on five features of these contracts to show that they are in reality sales of gas: (1) the leases assigned gas rights only, and then only above a particular strata; (2) the assignors retained a production payment on natural gas (plant) liquids and separator liquids; (3) the notes for the deferred balance of payments could be accelerated by production in excess of a stated amount over each installment period; (4) Continental (only) operates all of the assigned properties by contract from Texas Eastern on a cost-plus fee basis, with costs recoverable out of the separator liquid proceeds before the production payment is determined; (5) Texas Eastern took the properties from its subsidiary, Louisiana Gas,<sup>18</sup> subject to the debt, but is not personally liable thereon.

We disagree with the Commission's interpretation of the transaction. The "Assignment and Conveyance" not only passed rights to the gas, but also passed rights to wells and related production equipment and rights of ingress and egress. The assignors retained no operating rights. Although Texas Eastern entered into a management agreement with Continental, this agreement did not change the essential nature of the transaction. The management agreement stated that the reason for its execution was Continental's experience in operating and managing gas properties in or near Rayne Field, which has an extremely high pressure in its reservoirs. The agreement provided that, "Gathering, handling, separating, treating

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18. See note 2, *supra*.

and storing of the production, the sale thereof and payment therefor shall not be included in this delegation of authority, such operating rights and duties to be performed by Louisiana Gas [Texas Eastern], its successors and assigns." The agreement further retained in Texas Eastern the right to decide whether and where wells would be drilled or deepened, whether secondary recovery or recycling operations would be conducted, and what volume of gas would be nominated for production each month.

We are concerned here only with whether these transfers were "leases" as that term was used in *Panhandle*. Since *Panhandle* held that "leases" relate to the production or gathering of natural gas and are thus outside Commission jurisdiction, it is clear that any "lease" transfer passing substantial rights which are related to production and gathering, as do the "leases" in the instant case, would likewise be outside Commission jurisdiction. We see no significance in the fact that the leases pertained only to gas and were limited to gas found above a certain depth.<sup>19</sup> Nor do we see anything unusual about the reservation of a production payment out of the proceeds from sales of natural gas liquids.<sup>20</sup> The provision for accelerated payment of the purchase-money notes in case of increased production was merely a method of protecting the assignor's collateral security; there were no provisions for decelerated payments in case of decreased production. As already noted, the Management Agreement retained a number of controls in Texas Eastern.. Such agreements are not an uncommon practice.<sup>21</sup>

The Commission argues that in light of *Phillips Petroleum Co. v. Wisconsin*, 1954, 347 U.S. 672, the *Panhandle*

19. Cf. 3 Summers, Oil & Gas 603, 614 (Perm. ed. 1958); 2 Williams & Meyers, Oil & Gas 269; Merrill, *The Oil and Gas Lease—Major Problems*, 4 Neb.L.Rev. 488, 528, 531 (1962).

20. Cf. Bryan, *Overriding Royalty Under Oil, Gas and Mineral Leases in Louisiana*, 29 Tul.L.Rev. 340 (1954).

21. See 3 Summers, Oil & Gas 708 (Perm. ed. 1958).

case is not a bar to jurisdiction in the instant case. *Phillips* held that sales of gas by producers in interstate commerce for resale are within the Commission's jurisdiction. It is contended here that, since Texas Eastern intended at the time of the transfer of the leases to send the gas produced therefrom into interstate commerce for resale, the transfer is a jurisdictional one.

The *Panhandle* case, however, held that transfers of gas leases are exempt as an activity related to production and gathering. The Court in *Phillips* expressly recognized this holding,<sup>22</sup> but was there able to find jurisdiction because "production and gathering, in the sense that those terms are used in §1(b), end before the sales by Phillips occur."<sup>23</sup> This Court found jurisdiction for sales at well head in *Continental Oil Co. v. FPC*, 5 Cir. 1959, 266 F.2d 208, cert. denied, 361 U.S. 827 (1959), on the basis that such sales involved facilities for the sale of gas rather than facilities of production.<sup>24</sup> We recognized this distinction in *Deep South Oil Co. v. FPC*, 5 Cir. 1957, 247 F.2d 882, 889, cert. denied, 355 U.S. 930 (1958):

"The exemption of production and gathering merely means that the *physical activities, facilities and properties* used by petitioner in the production and gathering of natural gas are not within the commission's power of regulation. However, there is nothing in the Act which suggests, either expressly or by implication, that by the exemption of production and gathering, Congress intended that the wholesale sales of natural gas in interstate commerce which are consummated before the gas has been gathered or processed

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22. 347 U.S. at 678.

23. *Ibid.*

24. *Accord*, *J. M. Huber Corp. v. FPC*, 3 Cir. 1956, 236 F.2d 550, 556, cert. denied, 352 U.S. 971 (1957), which distinguished *Panhandle* as involving the sale of gas leaseholds. *But cf.* *Saturn Oil & Gas Co. v. FPC*, 10 Cir. 1957, 250 F.2d 61, 68, cert. denied, 355 U.S. 956 (1958).

should not be regarded as sales in such commerce over which the Commission was granted exclusive jurisdiction to regulate." (Emphasis added.)

We are bound by *Panhandle's* classification of leaseholds as being part of the "physical activities, facilities and properties" used in production and gathering. Sales at or near well head, however, are another matter. As stated in *FPC v. J. M. Huber Corp.*; D. N.J. 1955, 133 F.Supp. 479, 484, *aff'd*, 236 F.2d 550 (3 Cir. 1956), *cert. denied*, 352 U.S. 971 (1957):

"To say that the Commission has no authority over the real property interests a natural gas company acquires or relinquishes has little relevancy to a decision on jurisdiction over a sale at a point where production and gathering have ceased. In this case, Huber has not attempted to sell or dispose of its interest in its gas wells, but rather seeks to terminate the flow of the product of the wells—the gas."

Thus, we conclude that the lease transactions in the instant cases are outside the Commission's jurisdiction. The Commission complains that this will leave a "gap" in its regulatory powers. Fifteen years ago the Supreme Court in *Panhandle* authorized the Commission to bring this to the attention of Congress,<sup>25</sup> and the Commission has repeatedly done so. If in its wisdom Congress has declined to act, we have neither the power nor the inclination to act in its stead.

Our decision as to jurisdiction makes unnecessary any determination of such questions as whether the D.C. Circuit opinion was binding on the Commission as "the law of the case." As to Texas Eastern's application, we are of the opinion that it should be remanded to the Commission to determine whether the public convenience and necessity require that the certificate be denied, granted, or

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25. 337 U.S. at 515-16.

granted conditionally, in view of the cost of acquisition. We note with regret that this is essentially what the D.C. Circuit told the Commission to do three and one-half years ago.

The orders are reversed and remanded for further proceedings not inconsistent with the opinion of this Court.

**REVERSED AND REMANDED.**

**APPENDIX B.**

**JUDGMENT OF THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT.**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.**

**No. 20560**

**M. H. MARR,**

*Petitioner,*

**v.**

**FEDERAL POWER COMMISSION,**

*Respondent.*

**No. 20564**

**SUN OIL COMPANY,**

*Petitioner,*

**v.**

**FEDERAL POWER COMMISSION,**

*Respondent.*

**No. 20582**

**CONTINENTAL OIL COMPANY,**

*Petitioner,*

**v.**

**FEDERAL POWER COMMISSION,**

*Respondent.*

*Appendix B*

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No. 20587

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GENERAL CRUDE OIL COMPANY,  
*Petitioner,**v.*FEDERAL POWER COMMISSION,  
*Respondent.*

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No. 20829

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SUN OIL COMPANY,  
*Petitioner,**v.*FEDERAL POWER COMMISSION,  
*Respondent.*

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No. 20846

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M. H. MARR,  
*Petitioner,**v.*FEDERAL POWER COMMISSION,  
*Respondent.*

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No. 20847

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GENERAL CRUDE OIL COMPANY,  
*Petitioner,*FEDERAL POWER COMMISSION,  
*Respondent.*

No. 20591

TEXAS EASTERN TRANSMISSION CORPORATION,  
*Petitioner,*

*v.*

FEDERAL POWER COMMISSION,  
*Respondent.*

On Petitions for Review of Orders of the Federal Power  
Commission.

Before RIVES and BROWN, *Circuit Judges*, and GROOMS,  
*District Judge.*

### JUDGMENT

This cause came to be heard on the petitions of the M. H. Marr, Sun Oil Company, Continental Oil Company, General Crude Oil Company, and Texas Eastern Transmission Corporation, for review of Orders of the Federal Power Commission issued on February 6, 1963, April 12, 1963, and July 12, 1963, in Docket Nos. G-12446, et al, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered, adjudged and decreed by this Court that the Orders of the Federal Power Commission in these causes be and the same are hereby reversed; and that these causes be, and they are hereby remanded to the Commission for further proceedings not inconsistent with the opinion of this Court.

August 3, 1964

Issued as Mandate: